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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

DEDRA R. JOHNSON,

Plaintiff and Appellant,

v.

MICHAEL GRUSH et al.,

Defendants and Respondents.

F056572

(Super. Ct. No. 08CECG02133)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Alan M. Simpson, Judge.

Dedra R. Johnson, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

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Dedra R. Johnson appeals from an order granting a motion to quash service. The defendants did not file a brief in this appeal.

Our authority in this appeal is limited to considering a single issue: Did Johnson properly serve the defendants with her summons and complaint? Because of the limited scope of this appeal, our decision does not address questions regarding the merits of her claims against her former attorneys, the attorney referral service, or her prior landlords. We conclude that Johnson failed to demonstrate she properly served the defendants with her summons and complaint. Accordingly, we will affirm the order granting the motion to quash.

FACTS AND PROCEEDINGS

In mid-2004, Johnson rented a house in Fresno for \$700 per month and received a housing assistance payment of \$457 per month. In March 2005, the Housing Authorities of the City and County of Fresno conducted an inspection of that house. The house failed the inspection on many grounds, including rat and roach infestations and a flooded basement. The house failed a subsequent inspection conducted in May 2005.

On May 31, 2005, the Code Enforcement Division of the City of Fresno sent a preliminary notification to the owners of the house that listed 11 violations of the Fresno Municipal Code. One of the violations concerned a sump well in the basement that was holding stagnant water.

In June 2005, the landlord gave Johnson four notices to enter the dwelling unit for the purpose of inspecting and making necessary repairs. The landlord gave another notice in July.

In August 2005, the landlord filed a complaint for unlawful detainer, Fresno Superior Court case No. 05CECL06070, against Johnson and Richard Thomas. In September, the superior court entered judgment in favor of the landlord and against Richard Thomas and dismissed the case as to Johnson.

Johnson wished to pursue a claim against her landlord and the property management personnel. She went to a legal aid office in Fresno and was sent to an attorney referral office that referred her to a Fresno law firm. In November 2005, Johnson spoke with a Fresno law firm about her claim. The firm advised Johnson by letter that it was unable to represent her in the matter and warned her about time limitations that might bar her action if she delayed pursuing her claim.

In February 2006, Johnson contacted Pre-Paid Legal Services, Inc., by phone to see if they could help her. Johnson was told (1) they would send her a contract and rules and regulations, (2) she should send them the contract back with a money order in the amount of \$112, and (3) then they could get started on her case.

Johnson followed these instructions, paid a semiannual fee of \$112, and became a member of a program provided by Pre-Paid Legal Services, Inc. When Johnson received her membership card, she immediately called as directed on the card and was connected by the operator with Michael J. Grush, an attorney with the Los Angeles law firm of Parker Stanbury, LLP.

Grush told Johnson that he dealt with landlord-tenant issues and personal injury all the time and not to worry. Grush requested that Johnson fax him documents and told her he would review them and get back to her. Johnson faxed him 18 pages. The next day she confirmed by phone that he had received them. In the next couple of phone calls, Grush indicated he needed a few more days to review the documents and/or do legal research.

Johnson then received a letter from Grush dated April 5, 2006, stating that they had spoken the previous day about her legal matter and she must fax or mail him the documents they discussed before he could do anything further in the matter. Johnson phoned and told Grush he had confirmed that he had received her fax. Grush then stated that he had the papers and they got mixed up with other papers. Grush told Johnson not to worry, he was looking into it, and he was there to help her.

On April 11, 2006, Johnson spoke with Grush again and he told her that he was still working on her case and needed more time. Johnson received a three-sentence letter from Grush dated April 12, 2006, that stated: “Thank you for using your Pre-Paid Legal Services membership. [¶] I spoke with you on April 11, 2006 regarding your legal matter. [¶] Please be advised **we do not represent you in this matter.**”

By late April, Grush would not return her calls and Johnson was told by the operator he was not available. Around Labor Day, Grush phoned Johnson and stated that he could not help her. Johnson asserts that Grush “lead me to the duration period of my case and then said he could not help me.” This appears to mean that the time for bringing her claim against her former landlord expired before Grush said he would not represent Johnson in the matter.

Johnson contends that Grush should have helped her with her landlord-tenant issues and should have referred her to a local attorney to handle the matter. Johnson further contends that defendants “schemed [her] out of [her] money and thats not right.”

On December 10, 2007, Johnson filed a complaint in Fresno Superior Court using Judicial Council form PLD-C-001 (rev. Jan. 1, 2007), a two-page form for breach of contract claims. Johnson checked the boxes of the form that indicated (1) the action was a limited civil case and (2) the amount demanded did not exceed \$10,000. The action was assigned case No. 07CECL11170.

The complaint named Michael Grush and Pre-Paid Legal Services as defendants. Johnson checked the box in item No. 8 of the form for breach of contract. In item No. 9, other allegations, Johnson wrote: “Fraud, emotional distress, punitive damages, malicious intent.” Item No. 2 of the form states that attachments and exhibits consist of 26 pages. Those pages are not part of Johnson’s appendix or, if they are, they are not included immediately after the two-page complaint form.

On June 3, 2008, attorney John D. Barrett, Jr., served Johnson with a notice of motion to quash purported possible service of unknown pleadings. The notice indicated

the case had been assigned for all purposes to department 97E and that the motion would be heard in department 98B, located at “1255 Fulton Mall Road” in Fresno. The notice stated that defendants (1) Michael Grush, (2) Parker Stanbury, LLP, and (3) Pre-Paid Legal Services, Inc., would make “a special appearance, limited to the purpose of moving for an order quashing an [*sic*] purported service claimed by Plaintiff ROBERT SCHAEFER”¹

The motion to quash alleges that Johnson “has mailed and/or faxed unintelligible and incomplete documents to Parker Stanbury, LLP.” The motion asserts (1) defendants did not agree to service by fax, (2) defendants had not been personally served, (3) there was no substitute service, (4) there was no service by mail with notice or acknowledgement, and (5) service by mail on any out-of-state defendant was not accomplished as required by Code of Civil Procedure section 415.40.

On June 17, 2008, Johnson filed a second Judicial Council form PLD-C-001 in case No. 07CECL11170. In the section of the form concerning jurisdiction, boxes were checked indicating the action was reclassified from limited to unlimited and the amount demanded exceeded \$10,000 but did not exceed \$25,000. The second complaint listed the defendants in different places as Michael Grush, Pre-Paid Legal Services, Kahreem of Visionary Property Management, Jerry of Sayland Property Management, John Reckling, and David Hart. In the section of the form relating to causes of action, Johnson wrote: “Retaliation on the landlord part for previous mishap” and “Defamation and slander, compensatory damages, punitive damages, emotional distress, fraud and malicious intent.”

¹The copy of this document included in Johnson’s appellant’s appendix includes her handwritten notes that ask how the name of the plaintiff could be messed up if the document was prepared by a lawyer. The appellant’s appendix does not include a full copy of the notice of amended motion to quash and, therefore, we cannot tell if the erroneous identification of the plaintiff was repeated in that document. Because the record does not show the error was repeated, we do not consider whether that error was so significant that the superior court should have denied the motion.

A week later, the superior court issued a notice of reclassification, which (1) stated the lawsuit had been reclassified as an unlimited civil case based on an amended initial pleading and (2) assigned 08CECG02133 as the new case number.

In late July 2008, counsel for defendants filed a first amended motion to quash purported possible service. The caption in the notice stated that the case had been assigned for all purposes to department 97E and identified the time, date and department for hearing the motion as September 16, 2008, 3:30 p.m., and 97C.

On September 15, 2008, the superior court issued a tentative ruling to grant the motion to quash. On September 16, 2008, the superior court held a hearing on the motion and issued a minute order that adopted the tentative ruling and granted the motion to quash service. The tentative ruling stated that Johnson had failed to prove effective service of the operative pleading and summons.

On November 21, 2008, Johnson filed an amended complaint that listed the defendants as Michael Grush, Pre-Paid Legal Services, Inc., and Parker Stanbury, LLP.

On that same date, Johnson filed a notice of appeal that refers to an order or judgment entered on September 15, 2008. We interpret the notice of appeal as concerning the order granting the motion to quash that was filed on September 16, 2008, and incorporates the tentative ruling dated September 15, 2008.

DISCUSSION

I. Appealability of Order Quashing Service

The first question this court must consider is whether Johnson's appeal was taken from an appealable order or judgment.

The Legislature has stated that, other than in a limited civil case, an appeal may be to the court of appeal from "an order granting a motion to quash service of summons" (Code Civ. Proc., § 904.1, subd. (a)(3).) Therefore, we conclude the superior court's order granting the motion to quash service is an appealable order.

II. Standards for Self-representing Litigants

Johnson represented herself in the superior court proceedings and is representing herself in this appeal. Johnson's October 3, 2008, letter to the Attorney General refers to the contention made in defendants' motion to quash that Johnson is entitled to no preferential consideration and that all rules of pleading, procedure and evidence apply. Johnson's letter asserts that she feels different and hopes the Attorney General does also.

In light of Johnson's assertion, we will address the rules that apply to self-representing litigants in civil matters.

A. Trial Court Proceedings

The explanation set forth in the superior court's written tentative ruling stated that a party representing himself or herself is treated the same as a litigant appearing in court through an attorney. The superior court correctly stated the law.

Self-representing litigants such as Johnson, as well as the pleadings and motions they file in the trial court, are subject to the standards generally applied by California courts in civil litigation. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284-1285 (*Gamet*) [self-representing litigants are not exempt from statutes or court rules governing procedure].)

The superior court also acknowledged the guidance in *Gamet* that states judges dealing with self-representing litigants should recognize that the litigants may lack formal legal training and may not be familiar with legal jargon and, thus, should take "some care to assure their orders are plain and understandable." (*Gamet, supra*, 91 Cal.App.4th at p. 1285.)

We have reviewed the written tentative ruling and conclude the explanation it contains complies with the guidance given by the court in *Gamet*. The explanation stated (1) Johnson had the burden of proving effective service, (2) she failed to carry that burden, and (3) the motion to quash was granted as a result of her failure to prove effective service.

B. Proceedings in the Court of Appeal

Next, we consider the standards that the Court of Appeal applies to self-representing litigants appearing before it.

The Court of Appeal treats self-representing litigants like any other party and, therefore, they are subject to the same rules of appellate procedure as parties represented by an attorney. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [appellant representing self on appeal must follow correct rules of procedure].)

Accordingly, we shall treat Johnson like any other litigant, except that we, too, shall attempt to make this decision plain and understandable to someone who is not a lawyer and may not be familiar with the definition of certain legal terms.

C. Burden on the Appellant to Demonstrate Error

A general principle of appellate practice is that an “order of the lower court is *presumed correct.*” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) This principle means that an appellant will not win on appeal unless he or she affirmatively shows an error occurred. (*Ibid.*)

Therefore, for Johnson to win her appeal, she must demonstrate that she properly served her complaint and summons on the defendants. The terms “serve” and “service” are legal terms with precise definitions established by the Code of Civil Procedure. Therefore, we will reverse the order quashing service if and only if Johnson shows her attempts at delivery met with the specific requirements for service set forth in the Code of Civil Procedure.

III. Service Requirements

The service of a summons on a defendant within California accomplishes two separate functions. First, it notifies the defendant of the lawsuit and the consequences for failing to file a timely response. Second, service of a summons is the act that establishes the court’s authority (jurisdiction) over the defendant. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009) ¶¶ 4:1–4:2, p. 4-1.)

A plaintiff demonstrates proper service by (1) delivering the summons and complaint in one of the ways authorized by statute and (2) filing a properly completed proof of service with the superior court (Code Civ. Proc., § 417.30).

A. Proper Service on Out-of-State Corporation

Pre-Paid Legal Services, Inc., is an Oklahoma corporation with its corporate offices in Ada, Oklahoma. Johnson's opening brief refers to a "tester summons" and two envelopes that are addressed to Pre-Paid Legal Services, Inc., at a post office box in Ada, Oklahoma. The appendix does not contain (1) a completed return receipt for the letter or (2) a proof of service relating to the letters sent to Oklahoma.

Code of Civil Procedure section 417.30 requires plaintiffs to file a proof of service form. Here, the appendix prepared by Johnson contains no proof of service related to the corporate defendant. Therefore, Johnson has failed to prove that she complied with the requirements of the Code of Civil Procedure regarding service on an out-of-state corporation.

In addition, Code of Civil Procedure section 415.40 states that a summons may be served on a person outside this state "by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt." Here, the appendix includes no completed return receipt. (See Code Civ. Proc., § 417.20, subd. (a) [inclusion of signed return receipt in proof of service filed with court].) In other words, the defects in Johnson's attempt to serve Pre-Paid Legal Services, Inc., extend beyond the failure to file a proof of service with the court. Furthermore, the appendix does not show that delivery of the summons and complaint to Pre-Paid Legal Services, Inc., was completed in another manner authorized by statute.

Accordingly, Johnson has not shown that the trial court erred when it quashed service as to Pre-Paid Legal Services, Inc.

B. Service on Individual Attorney and Law Firm

Johnson attempts to prove defendants were served as required by law by pointing out that she faxed and mailed papers to Grush and his law firm in December 2007.

Johnson refers to a fax transmission report that indicates 42 pages were faxed to telephone number (213) 955-0018 on December 13, 2007, starting at approximately 8:58 a.m. The declaration of John D. Barrett, Jr., states that on or about December 11, 2007, Parker Stanbury, LLP “received about ten (10) pages of materials from [Johnson] and about thirty-two (32) blank pages via fax, apparently from [Johnson]” but the firm had never agreed to accept service of anything by fax.

Johnson states that she talked to Grush in December 2007 and she advised him that he should receive copies of the judicial papers by certified mail. The declaration of John D. Barrett, Jr., states that on or about December 26, 2007, Parker Stanbury, LLP received from Johnson by United States mail about six pages of partially completed Judicial Council form pleadings and about 30 pages of miscellaneous materials. Barrett states that no notice and acknowledgment of receipt form was received. (See Code Civ. Proc., § 415.30 [manner for serving a summons by mail; two copies of notice and acknowledgement of receipt of summons must be included].)

First, we conclude that Johnson’s attempt to deliver the summons and complaint by fax was not proper because defendants did not agree to accept service by that method.

Second, we conclude that Johnson’s attempt to deliver the summons and complaint by mail did not comply with the requirements of the Code of Civil Procedure because two copies of the notice and acknowledgement of receipt were not included with the summons and complaint. (Code Civ. Proc., § 415.30.)

Third, the appendix filed by Johnson does not include a proof of service that was accepted by the clerk of the superior court. The appellant’s appendix does include a copy of a proof of service form with an attached “defective notice” that states the proof of service was defective because it was served by mail inside California and the proof of

service was not filled out properly. Therefore, the appellate record does not demonstrate that Johnson complied with the requirement of filing a proof of service.

C. Summary

The superior court's order granting the motion to quash is upheld on two grounds. First, Johnson has failed to demonstrate that she delivered the summons and complaint in a manner specified by the Code of Civil Procedure. Second, Johnson failed to file the required proof of service.

DISPOSITION

The order granting the motion to quash service is affirmed. The parties shall bear their own costs on appeal.

DAWSON, J.

WE CONCUR:

WISEMAN, Acting P.J.

HILL, J.